

Estonia: Hypothetical licence fee, Supreme Court of Estonia, 2-14-56641, 29 November 2017

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A full summary of this case has been published on Kluwer IP Law.

In this case, the Supreme Court of Estonia analyses the concept of the "hypothetical licence fee" under the Estonian Copyright Act, in accordance with Article 13(1)b) of the EU Enforcement Directive. The court is of the opinion that the "hypothetical licence fee" must be calculated based on the real value of the right of use of a particular work. In this regard it is irrelevant whether the person who has used the work illegally would have been able to use another similar work and acquire a licence at a much lower cost. It is important to note that the "hypothetical licence fee" does not cover the damages the author is entitled to claim for the infringement of his moral rights.

The Supreme Court also points out that when a photograph has been made available on the Internet, in general the author still enjoys all the exclusive moral and economic copyrights vested in the photograph. This means that the author has the right to authorise or prohibit making the work available to the public in such a way that persons may access the work from a place and at a time individually chosen by them (right of making the work available to the public).

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